

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ANGEL S.,

Petitioner,

vs.

TRI-COUNTIES REGIONAL CENTER,

Respondent.

OAH Case No. 2011070223

(Early Intervention Services Act
Gov. Code, § 95000 et seq.)

DECISION

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on July 27, 2011, in Oxnard, California.

Deena Bernabe, Services and Supports Services Manager, represented Tri-Counties Regional Center (Respondent or Service Agency).

Monique and Fernando S.¹, Petitioner Angel S.'s parents, represented Petitioner.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

ISSUE

Whether Petitioner may transfer case management to Westside Regional Center.

¹ Initials have been used instead of the family surname to protect Petitioner's and his family's privacy.

FACTUAL FINDINGS

1. Petitioner was born on August 27, 2009, and has been found eligible for services under the Early Intervention Services Act (Act), Government Code section 95000 et seq., as an individual with global developmental delays.

2. Petitioner has also been found eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code² section 4500 et seq., by reason of mental retardation and epilepsy.

3. Petitioner has been diagnosed with infantile spasms, a form of epilepsy. As a result of this condition, he has low muscle tone and other musculoskeletal deficits, which affect his motor skills. He is unable to sit, walk, or crawl. He uses a gastric tube for feeding. Regional Center does not dispute his need for physical and occupational therapies.

4. His latest Individualized Family Service Plan (IFSP) was prepared following a meeting on August 18, 2010, and provides for in-home physical therapy and occupational therapy. Seaside Therapy, Inc., provides each of the services once per week.

5. Petitioner's family has been seeking more intensive, clinic-based, physical therapy services. Their private insurance carrier provides physical therapy services through Easter Seals of Ventura County (Easter Seals). Petitioner has received some sessions from this provider, but the family is not satisfied with the scope of therapy or the progress made by the child. As both parents described it, Easter Seals uses toys and minimal manipulation, and Petitioner did not seem to benefit from the therapy.

6. a. Petitioner attended a two-week intensive physical therapy program provided by Neurological and Physical Abilitation Center (NAPA). NAPA used equipment, such as a walker and a treadmill, which the family had never seen another physical therapist use in providing services to their son. The parents were impressed by positive results obtained by the end of the two weeks.

b. Alyssa Parker, a therapist with NAPA, documented the progress observed by the parents in a letter submitted in evidence. She wrote: "Angel's overall head control in all planes is much improved as he is now able to activate his neck musculature against gravity. While sitting with his trunk supported, Angel is able to maintain adequate head control over 1 minute with appropriate motivation. Initially, Angel was unable to maintain an upright posture with head control. Following two weeks of therapy, Angel was

² Unless otherwise stated, all statutory references are to the Welfare and Institutions Code.

able to maintain independent ring-sitting for up to 20 seconds with adequate head control and head/neck rotation to observe his surroundings. . . . Angel also began to weight bear through his bilateral upper extremities for the first time which allowed him to perform prone push-ups with moderate assistance as well as begin to use his arms for balance and stability in sitting. Angel's increased trunk strength allowed him to sit up with more independence, vocalize more loudly and produce more sounds. Angel is more alert and engaged with people and objects in his environment as he uses his eyes and improved head control to scan the room. . . ." (Exhibit 2, at pp. 1-2.)

7. NAPA is located at 5220 West 104 Street, Los Angeles, California. It is located outside Service Agency's geographic catchment area. Claimant resides in Service Agency's catchment area. NAPA is located within the catchment area of the Westside Regional Center, and is vendored by that service agency to provide physical therapy and occupational therapy services to its consumers.

8. Petitioner appears ready to participate in clinic-based physical and occupational therapy services, and his neurologist has recommended an increase in these services. Service Agency agrees that Petitioner is ready for additional, clinic-based services, and notes that it has three providers, including Easter Seals, who are vendored to provide physical therapy and occupational therapy to Petitioner.

9. Petitioner's family requested the transfer of case management services to Westside Regional Center, so that he may receive services from NAPA. On June 16, 2011, Service Agency denied the request, as services are to be delivered in the area in which the person resides and it has providers able to deliver the services at issue. Petitioner's family filed a timely due process fair hearing request.³

LEGAL CONCLUSIONS

1. In enacting the Act, the Legislature declared its intent that early intervention services for infants at risk of developing developmental disabilities constitute a cost-effective way to significantly reduce the potential impact of many disabling conditions and positively influence later development when the child reaches school age. (Gov. Code, § 95000.) Direct services are provided through the regional center system created pursuant to the Lanterman Act, in coordination with other State agencies. (Gov. Code, §§ 95002 and 95003.)

2. Section 4643.5, subdivision (a), provides that "If a consumer is or has been determined to be eligible for services by a regional center, he or she shall also be considered

³ Service Agency had also denied the family's request for funding of NASA's intensive therapy program, but the family did not appeal such denial.

eligible by any other regional center if he or she has moved to another location within the state.”

Moreover, “Whenever a consumer transfers from one regional center catchment area to another, the level and types of services specified in the consumer’s individual program plan shall be authorized and secured, if available, pending the development of a new individual program plan for the consumer. . . The department shall develop guidelines that describe the responsibilities of regional centers in ensuring a smooth transition of services and supports from one regional center to another” (Welf. & Inst. Code, § 4643.5, subd. (c).)

3. As the references to consumer residence and regional center catchment areas clearly indicate, section 4643.5 contemplates consumers receiving services from the regional center in whose geographic area of responsibility the consumer resides. On December 8, 1998, the Department of Developmental Services promulgated the Inter-Regional Center Transfer Guidelines (Guidelines) required by section 4643.5, subdivision (c), which guidelines recognize that services are to be provided by the regional center in whose catchment area the consumer resides. The Guidelines emphasize coordination between sending and receiving regional centers to ensure a smooth transition, and provide for a dispute resolution mechanism should problems arise.

4. Because Petitioner resides within Respondent’s catchment area, he must receive services from Respondent. Moreover, Respondent agrees that clinic-based services are appropriate, and has vendors who can provide the services. In these circumstances, case management services may not be transferred to a regional center in whose catchment area the consumer does not reside simply to obtain a particular service provider.

ORDER

Petitioner’s request for the transfer of case management responsibilities to Westside Regional Center is denied.

Dated: August 11, 2011

Samuel D. Reyes
Administrative Law Judge
Office of Administrative Hearings